No. 12150

In the United States Court of Appeals for the Ninth Circuit

CALIFORNIA ASSOCIATION OF EMPLOYERS, A CALIFORNIA CORPORATION DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF RENO EMPLOYERS COUNCIL, APPELLANT

v.

BUILDING AND CONSTRUCTION TRADES COUNCIL OF RENO, NEVADA, AND VICINITY, ET AL., AND NATIONAL LABOR RELATIONS BOARD, APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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v.

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JURISDICTION

This case is before the Court on appeal from an order of the United States District Court for the District of Nevada (R. 267–268), dismissing an action brought by the California Association of Employers (appellant herein)[1] for a declaratory judgment and injunctive relief (R. 2–44).

[1] The Association is a California corporation, doing business in the State of Nevada under the fictitious name of Reno Employers Council (R. 3). It represents, for collective bargaining purposes, "the vast majority of firms supplying [building] materials and doing construction work in the Northwestern part of the State of Nevada and in the Northwestern part of the State of California" (R. 5–7). The California Association of Employers is hereinafter referred to as "the Association" or "the appellant."

The action below named as defendants the Building and Construction Trades Council of Reno, Nevada, and sixteen individual labor organizations affiliated with the Council (R. 2–3).[2] The jurisdiction of the District Court was predicated on Article I, Section 8, Clause 3 of the Constitution of the United States, the National Labor Relations Act as amended (61 Stat. 136, 29 U. S. C., Supp. I, Secs. 141 *et seq.*), Section 24 (8) of the Judicial Code,[3] and the Declaratory Judgment Act[4] (R. 5, 63–64; Appellant's Br., pp. 2–3).

After commencement of the action below, the National Labor Relations Board (hereinafter called "the Board") petitioned the District Court for leave to intervene (R. 149–151). The Association and the Union consented to such intervention (R. 153–154), and, on September 16, 1948, the court granted the Board leave to intervene (R. 158).

Both the Union and the Board filed motions to dismiss the complaint (R. 145–149, 155–159). The District Court, after hearing (R. 160–267), granted the Board's motion "upon all the grounds urged" therein, and entered an order dismissing the complaint (R. 267–268). The decision of the court, ac-

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[2] The Building and Construction Trades Council represents, for collective bargaining purposes, the labor organizations affiliated therewith. The members of these labor organizations are employed in the industry represented by the Association. (R. 3, 18–19; Appellant's Br., p. 3.) The Trades Council and its affiliated unions are hereinafter referred to as "the Union."

[3] Now 28 U. S. C. § 1337.

[4] 28 U. S. C., Sec. 400. Now 28 U. S. C. §§ 2201, 2202.

companying the order, appears in the record at R. 268–272.

This Court has jurisdiction of the appeal pursuant to 28 U. S. C. § 1291.

STATEMENT OF THE CASE

I. The complaint in the court below

The complaint (R. 2–44), filed on May 21, 1948, insofar as is here pertinent, alleged in substance as follows:

1. On May 24, 1947, the Association and the Union entered into a master industry collective bargaining contract, which provided that it shall remain in effect through "May 21, 1948, and shall continue to remain in full force and effect thereafter, except as to wages and hours, which may be subject to change or modification" on thirty days' written notice by either party (R. 4, 29). The contract contained a closed shop or "union referral slip" clause, under which no employee could be hired unless he exhibited a slip certifying in effect that the "employee is a member of the proper affiliated union and/or recommended by said union to the employer" (R. 10–11, 20–21).

2. About March 15, 1948, the Association notified the Union that it desired to negotiate concerning the contract, "in order to bring about certain changes which will make our agreement in accordance with the provisions of the" amended National Labor Relations Act[5] (R. 7–8, 35). Negotiations were there-

[5] 61 Stat. 136, 29 U. S. C., Supp. I, Secs. 141 *et seq;* hereinafter called "the Act."

upon undertaken, wherein the Association advised the Union that in its view, the contract was subject to the provisions of the Act; that the Act prevented continuation of the contract beyond May 21, 1948 without revision of the present union security clause; and that the Union should immediately take steps to comply with the Act "by filing the necessary petitions so that proper elections may be held prior to May 21, 1948 for the purpose of securing proper authority to request union security provision" in the contract[6] (R. 8).

3. The Union replied that it did not believe that the Act applied to the construction industry, and that, until a court determined this question and the Board established feasible procedures for union shop elections, further negotiations would occur only on condition that the present closed-shop clause be continued (R. 9, 36–38). At this point, all negotiations between the Association and the Union terminated (R. 9–10).

4. During the course of the aforesaid negotiations, the Association requested the General Counsel of the Board for an opinion as to whether the Act applied to employment relations in the industry (R. 10, 39–41). He declined to render such opinion, because the problem posed was "a controversial one" which had not yet been "the subject of Board and Court decisions" (R. 10, 42).

5. The firms represented by the Association are engaged in, and use materials which flow in, interstate commerce (R. 7).

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[6] See Sections 9 (e) (1) and 8 (a) (3) of the Act, which are set forth in the Appendix, *infra*, pp. 27–39.

6. The refusal of the Union to negotiate except on the assumption that the Act is inapplicable is not in good faith, but merely a subterfuge to coerce the Association into agreeing to increase existing wage rates (R. 11–12). Further, the continuation of the existing closed-shop clause, as demanded by the Union, would be in direct violation of the Act (R. 11).

7. In view of the impasse reached, the contract would expire on May 21, 1948, and the renewal or substitution thereof would be precluded (R. 12–13). The termination of the contract would be followed by an interruption in the free flow of interstate commerce, for the Union would immediately resort to strikes, slow-downs and other forms of economic coercion (R. 12–14).

Accordingly, the complaint requested, *inter alia,* that the court render a declaratory judgment as to whether the Act governs any collective bargaining contract between the Association and the Union; and that, pending this judgment, the court issue a temporary restraining order (and then, after due notice, a preliminary injunction) enjoining the Union "from using coercion of any kind to prevent the maintenance of the status quo" (R. 15–16).

II. The motions to dismiss

On the day the complaint was filed (May 21, 1948), the District Court issued an *ex parte* temporary restraining order (enjoining the Union as prayed in the complaint), and a rule requiring the Union to show cause why a preliminary injunction should not issue (R. 45–57). On May 28, 1948, the Union filed a motion to vacate the restraining order and the rule, for

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the reason, *inter alia,* that the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. Secs. 101 *et seq.*) deprived the court of jurisdiction to grant injunctive relief (R. 47–49). After hearing, the court dissolved and vacated the temporary restraining order previously issued, and denied the Association's application for a preliminary injunction (R. 50). The court held (R. 140–144) that the Norris-LaGuardia Act precluded a preliminary injunction, and that the ban imposed by this Act was not lifted by the amended National Labor Relations Act.

Thereafter the Union filed motions to dismiss the complaint (R. 145–149), on the ground, *inter alia,* that the court lacked jurisdiction because the subject matter of the action was exclusively within the jurisdiction of the National Labor Relations Board, and was not within the provisions of the Declaratory Judgment Act. The Board, which had been granted leave to intervene (R. 149–151, 158, 153–154), also filed a motion to dismiss the complaint (R. 158–159).

The Board's motion pointed out (R. 158) that the gravamen of the complaint was that "the collective bargaining agreement between [the Association and the Union] is subject to the provisions of the National Labor Relations Act, as amended * * * and that [the Union is] engaging in, or threaten[s] to engage in, certain conduct which constitutes unfair labor practices under Section 8 (b) (2) and (3) of that Act."[7] The Board urged that the court was without

[7] These provisions are set forth in the Appendix, *infra,* pp. 27–39. The allegations of the complaint which suggest violations of these provisions are summarized in "6" and "7," *supra,* p. 5.

jurisdiction of the subject matter of the complaint because (R. 159):

1. The Act vests the Board "with exclusive initial jurisdiction of matters involving unfair labor practices."

2. "The federal district courts do not have jurisdiction, at the suit of private parties, to determine whether the operations of employers and labor organizations affect commerce within the meaning of the [Act], to determine whether unfair labor practices within the meaning of the Act have been committed, or to remedy, by injunction or otherwise, unfair labor practices. The jurisdiction of the federal district courts over unfair labor practices has been expressly limited by Sections 10 (j) and 10 (l) of the [Act] to those situations where the Board, or an officer or regional attorney thereof, petitions such courts for preliminary injunctive relief, pending a determination by the Board as to whether unfair labor practices have been committed."

3. The Association "has failed to exhaust its administrative remedy under the provisions of the [Act]."

The Union filed a further motion to dismiss the complaint (R. 155–157), for the reason that the action had become moot and therefore there was no actual controversy between the parties upon which the court could render a declaratory judgment. The affidavit annexed to this motion (R. 156–157) stated that the May 1947 contract (R. 17–30) has since expired and was no longer of "force and effect;" that new and different contracts had been entered into by each of

the labor organizations affiliated with the Building and Trades Council; that the employees and employers were then operating under these "new, separate and distinct contracts;" and that there was then no "labor dispute or trouble * * * in the City of Reno between parties plaintiff and any of the parties defendant and covered by any of the provisions" of the May 1947 contract.

III. The proceedings in the District Court on the Board's motion to dismiss the complaint

A hearing on the Board's motion to dismiss the complaint was held on September 16, 1948 (R. 160–267). At the start of the hearing, the Association conceded that all allegations in the complaint regarding unfair labor practices on the part of the Union and irreparable injury (see "6" and "7," *supra,* p. 5) were no longer in the case, and agreed to withdraw those portions of the prayer which requested injunctive relief (R. 162–164, 169–175). In short, the Association stated that it was not asking the court to determine whether certain past or threatened conduct by the Union constituted unfair labor practices under the Act, or to remedy such practices; it was merely asking the court to render a declaratory judgment as to whether any collective bargaining contract between the Association and the Union was governed by the Act (R. 173–175).[8]

[8] The Association denied, however, that the controversy had ceased, as alleged by the Union in its affidavit (*supra*, p. 7). The Association contended that certain of the labor organizations had not entered into new contracts, and that, as to those that had, the matter of union security had been left open pending the court's

At the close of the hearing, the court granted the Board's motion to dismiss the complaint, "upon all the grounds urged in the motion" (R. 266). The order of the court dismissing the complaint was entered on October 18, 1948 (R. 267–268). In its accompanying decision (R. 268–272), the court stated (R. 270):

> The whole question resolves itself around the point as to whether or not the unions here are engaged in interstate commerce. This Court might hold they were * * * and they might get a decision in the district court in Sacramento or San Francisco contrary * * * There would be appeals to Circuit Court of Appeals in both cases. That might go on all over the Circuit and continue throughout the United States * * *

This, the court added (R. 270–271, would be contrary to the intention of Congress to "establish a single paramount administrative or quasi-judicial authority" for the purpose of determining "questions of unfair labor practices and also the question of jurisdiction under the Act" (citing *Amazon Cotton Mill Co.* v. *Textile Workers,* 167 F. 2d 183, 186 (C. A. 4)). "I think it is conceded that the National Labor Relations Board has the jurisdiction to determine whether or not these unions are subject" to the Act (R. 271). If the court were to decide this matter: "This would be a case where the court steps in before an administrative body, created primarily and specifically for the

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decision (R. 165–169). Although the Association stated that it had filed an affidavit summarizing these facts (R. 168), a copy of such affidavit is not contained in the record.

purpose of deciding such questions, has an opportunity to act" (*ibid.*).

ARGUMENT

Preliminary statement

From the face of the complaint (R. 5, 8, 11–13, 16) it is apparent that the relief sought by the Association in the court below was a determination whether the action of the Union in refusing to negotiate, except upon condition that a union security clause not executed in conformity with Section 9 (e) (1) of the National Labor Relations Act, as amended, be included in any agreement reached, was an unfair labor practice.[9] The complaint further discloses that resolution of this question depends upon whether the National Labor Relations Act is deemed to govern employment relations in the particular segment of the construction industry in which the Association and the Union are engaged. Thus, the Association's contention, that any union security agreement executed by the parties must conform to Section 9 (e) (1), rests upon its view that the operations of its members affect commerce within the meaning of that Act.[10] The Union's position, that Section 9 (e) (1) need not be

[9] Although at the hearing the Association withdrew its request for a declaration that the union's conduct was an unfair labor practice, together with its request for injunctive relief, this withdrawal does not obscure the fact that the sole purpose of the complaint was to obtain relief against conduct which the Association believed to constitute unfair labor practices.

[10] See Sections 2 (6) and (7) set forth in the Appendix, infra, pp. 27–39. Cf. *United Brotherhood of Carpenters & Joiners* v. *Sperry*, 170 F. 2d 863 (C. A. 10); *Shore* v. *Bldg. Trades Council*, 23 L. R. R. M. 2417 (C. A. 3, March 4, 1949).

complied with, rests upon its contention that the Act as a whole is inapplicable to the activities of the Association and its constituent members.

Congress, in Section 10 of the Act, established procedures for the resolution of questions such as these concerning the effect and applicability of the National Labor Relations Act. Pursuant to those procedures the Association could have filed charges with the National Labor Relations Board alleging that the Union's insistence upon incorporation of an illegal clause in the agreement between the parties constituted a refusal to bargain within the meaning of Section 8 (d) of the amended Act, and was therefore an unfair labor practice within the meaning of Section 8 (b) (3) thereof. The Association might also have alleged that the action of the Union in seeking to induce the Association to retain such a union security clause in the agreement constituted an attempt to cause the Association and its members "to discriminate against an employee in violation of Section 8 (a) 3," and was an unfair labor practice under Section 8 (b) (2) of the Act. Charges such as these, setting in motion the remedial procedures specified in Section 10 of the Act, would culminate, as in other cases, in decision by the National Labor Relations Board of the questions presented.[11] Disposition of such charges by the Board, in the circumstances shown by the complaint

[11] See, e. g., *Matter of Nat'l Maritime Union*, 78 N. L. R. B. 971; *Ibid.*, 82 N. L. R. B. No. 152, decided April 19, 1949; *Matter of American Radio Ass'n*, 82 N. L. R. B. No. 151, decided April 19, 1949; *Matter of Amalgamated Meat Cutters*, 81 N. L. R. B. No. 164, decided March 1, 1949.

filed herein, would require that the Board decide whether the Act is applicable to the operations of the Association and the Union, as a condition to determining whether unfair labor practices were committed by the Union. Upon the issuance of a decision and order by the Board, the matter could be presented to the appropriate Court of Appeals for review, either on the Board's petition for enforcement (Section 10 (e)) or on the Union's or the Association's petition for review (Section 10 (f)). Cf. *N. L. R. B.* v. *Nat'l. Maritime Union,* now pending before the Court of Appeals for the Second Circuit on the Board's petition for enforcement of its order issued in *Matter of Nat'l. Maritime Union,* 78 N. L. R. B. 971.

Instead of resorting to this statutory procedure to secure the relief it desired, the Association attempted to circumvent it by first seeking an advisory opinion from the General Counsel, and then, on the latter's refusal to give one, seeking relief in the District Court of the United States, not upon the basis of any jurisdiction conferred by the National Labor Relations Act, which is the governing statute, but upon the Declaratory Judgment Act, which contemplates a pre-existing basis of jurisdiction, here lacking.

We show hereafter that the District Court properly dismissed the complaint because jurisdiction of the subject matter was lacking, and, independently thereof, the complaint was demurrable because of the absence of indispensable bases for equitable or declaratory relief.

Point I

The District Court was without jurisdiction of the subject matter of the action

A. The National Labor Relations Act vests the Board with exclusive primary jurisdiction to determine whether unfair labor practices have been committed and to decide subsidiary questions such as whether the Act is applicable to particular persons or controversies

It is perfectly clear from the legislative history of the original National Labor Relations Act (49 Stat. 449, 29 U. S. C., Secs. 151 *et seq.*) that Congress intended "to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining" (S. Rep. No. 573, 74th Cong., 1st Sess., p. 15), and that, instead of conferring private rights enforceable in the courts at the suit of private parties, it intended to create only "public" rights enforceable by the Board. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 24. The Act implemented this congressional intent in the following manner: Section 10 (a) expressly provided that the Board's power "to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce * * * *shall be exclusive,* and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."[12] [Italics added.] Judicial re-

[12] The bill as originally drafted contained a provision granting concurrent jurisdiction to the Board and the federal district courts to prevent unfair labor practices, but this provision was deleted by Committee amendment on the floor of the Senate. 29 Cong. Rec. 7651–7652.

view was provided for, but it was expressly limited to review of final orders of the Board, and jurisdiction to review such orders was vested exclusively in the United States Courts of Appeals (Sections 10 (e) and (f)).

In consequence of this background, the courts recognized that the Board was vested with exclusive primary jurisdiction to determine whether unfair labor practices had been committed, and to provide redress against such practices. The courts implemented this recognition by holding that both the federal district courts and state courts were precluded from affording private parties relief against alleged unfair labor practices. *Amalgamated Utility Workers* v. *Consolidated Edison Co.,* 309 U. S. 261, 265–270; *Nat'l Licorice Co.* v. *N. L. R. B.,* 309 U. S. 350, 362, 366; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41; *Blankenship* v. *Kurfman,* 96 F. 2d 450 (C. A. 7); *Fur Workers* v. *Fur Workers,* 105 F. 2d 1, 12–16 (C. A. D. C.), affirmed, 308 U. S. 522; *Int'l Brotherhood* v. *Int'l Union,* 106 F. 2d 871 (C. A. 9); *U. E. R. & M. Workers* v. *I. B. E. W.,* 115 F. 2d 488 (C. A. 2); *United Brick & Clay Workers* v. *Junction City Clay Co.,* 158 F. 2d 552 (C. A. 6). See also, *Bethlehem Steel Corp.* v. *N. Y. S. L. R. B.,* 330 U. S. 767; *La Crosse Telephone Corp.* v. *Wisconsin E. R. B.,* 336 U. S. 18. Moreover, because the statutory procedure was deemed exclusive, it was held that private parties could seek redress against allegedly unlawful action by the Board only after the Board had issued a final order in an unfair labor practice proceeding, and then only in the Courts of Appeals. *N. L. R. B.*

v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 46–47; *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41; *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler,* 303 U. S. 54; *A. F. of L.* v. *N. L. R. B.,* 308 U. S. 401; *Madden* v. *Brotherhood,* 147 F. 2d 439 (C. A. 4).

Early in the history of the National Labor Relations Act the Supreme Court held that the exclusive primary jurisdiction of the Board extended not only to determining whether unfair labor practices had been committed, but also to determining whether particular persons or enterprises were subject to the Act. *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41; *Newport News Shipbuilding & Drydock Co.* v. *Schauffler,* 303 U. S. 54; *Int'l. Brotherhood* v. *Int'l. Union,* 106 F. 2d 871 (C. A. 9). Cf. *Greenebaum Tanning Co.* v. *N. L. R. B.,* 129 F. 2d 487, 488–489 (C. A. 7). Power to determine this question, of course, is a necessary incident of the power to determine whether unfair labor practices have been committed. To deprive the Board of power to pass upon questions of jurisdiction would nullify the "specific and all-embracing powers" conferred upon the Board by Section 10 (a), and would run counter to "the general rule that a tribunal empowered to hear controversies is empowered to pass upon its jurisdiction to hear those controversies." *Thompson Products, Inc.* v. *N. L. R. B.,* 133 F. 2d 637, 640 (C. A. 6). Since Congress had conferred power upon the Board to determine questions of jurisdiction initially, and since that power was exclusive, the Supreme Court, in the cases cited above,

specifically held that the district courts were without jurisdiction to determine whether particular persons or controversies were subject to the Act.

Title I of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. I, Secs. 141 *et seq.*), which amended the National Labor Relations Act, did not broaden the power of the district courts in this respect. In that Act, it is true, Congress conferred upon the federal district courts jurisdiction to afford temporary relief against certain types of unfair labor practices. But it is clear that the jurisdiction thus conferred permits the granting of relief only upon a petition filed by the Board, not upon a suit brought by private parties. And it is also clear that such relief is to serve as an incident to proceedings before the Board, to be effective only until entry of a decision by the Board—it is not, as appellant would have it, available as a substitute for Board proceedings.[13]

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[13] The only provisions of the amended National Labor Relations Act (Title I of the Labor Management Relations Act) which deal with the jurisdiction of the federal district courts are Sections 10 (j) and (1). Section 10 (j) gives the federal district courts jurisdiction to grant temporary injunctions *upon application of the Board*, after the latter has issued a complaint charging an unfair labor practice. Section 10 (1), which is limited to certain strikes and secondary boycotts (declared by Section 8 (b) to be unfair labor practices on the part of labor organizations), empowers the federal district courts to grant temporary injunctive relief *upon application of an officer or regional attorney of the Board*, pending the Board's final determination as to whether an unfair labor practice has been committed.

The remaining provisions of the Labor Management Relations Act which deal with the jurisdiction of the federal district courts are in Titles II and III of that Act, involving matters separate and apart from those covered by the National Labor Relations Act Title I). These provisions are: (1) Section 208 (a), under which

The Court of Appeals for the Fourth Circuit, after an exhaustive analysis of the text and legislative history of the Labor Management Relations Act, rejected the argument that the Act expanded the power of the federal district courts to deal with matters committed to the primary jurisdiction of the Board. *Amazon Cotton Mill Co.* v. *Textile Workers Union,* 167 F. 2d 183.[14] The Court said (p. 186):

> There is nothing in either the text or the history of the Labor Management Relations Act to indicate * * * any intention to change the method by which unfair labor practices were

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the federal district courts are authorized to issue injunctions, notwithstanding the provisions of the Norris-LaGuardia Act, in certain cases involving strikes and lockouts affecting interstate commerce and imperiling the national health and safety, but only upon petition of the Attorney General following a report of a board of inquiry and direction by the President; (2) Section 301 (a) which vests such courts with jurisdiction to adjudicate suits for damages by private parties arising from breach of contract, and Section 303 (b) which confers similar authority in cases involving certain strikes and secondary boycotts engaged in by labor organizations; and (3) Section 302 (e), under which federal district courts are authorized to enjoin payments by employers to employee representatives, made in violation of Section 302.

[14] The *Amazon* case arose out of a suit in a federal district court brought by a union against an employer. The union alleged that the employer had committed an unfair labor practice by refusing to bargain with the union, that, as a result, the employees had gone on strike, and that they had sustained damage in the form of loss of wages. The relief asked was an injunction requiring the employer to bargain with the union and an award of damages. Both the employer and the Board (which had been permitted to intervene) moved to dismiss on the ground that the Board had exclusive jurisdiction of the subject matter of the action and the District Court was accordingly without jurisdiction. The Court of Appeals sustained these contentions.

> dealt with under the [original National Labor Relations] act or to vest the District Courts with jurisdiction as to these matters, except to the limited extent that such jurisdiction was expressly conferred [i. e., upon application of *the Board* for preliminary injunction, as provided in Sections 10 (j) and (1)].

In reaching this conclusion, the Court specifically considered and rejected the contention here urged by appellant (Br. p. 6), that, in eliminating the word "exclusive" from Section 10 (a) of the National Labor Relations Act (cf. p. 13, *supra*), Congress manifested an intention to confer a concurrent jurisdiction on the federal district courts. The Court stated (p. 187):

> The change in the statute upon which reliance is placed was clearly intended, not to vest the courts with general jurisdiction over unfair labor practices, but to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (1), section 208, and section 303 * * *, as well as the power in the Board, conferred by the proviso in section 10 (a) to cede jurisdiction to state agencies in certain cases. This is not only the clear meaning of the statute when its language is considered in the light of existing law, but it is also the meaning given it by the Conference Committee of the House and Senate (See H. R. No. 510, June 3, 1947 [p. 52]).[15]

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[15] The Court also made it clear that Section 303 (b) of the Labor Management Relations Act (see *supra*, p. 17, n. 13) did not confer jurisdiction upon the federal district courts of unfair labor practices under the National Labor Relations Act. Although the strikes and boycotts, for which Section 303 (b) provides a private

The broad holding of the *Amazon* case—that the Labor Management Relations Act made no such changes in the original National Labor Relations Act as would vest the federal district courts with jurisdiction to determine questions committed to the primary jurisdiction of the Board—was also articulated by the Supreme Court in *Bakery Sales Drivers* v. *Wagshal,* 333 U. S. 437, 442, decided two weeks before *Amazon.* And such holding has been uniformly followed by the other courts which have considered the question. *Amalgamated Association* v. *Dixie Motor Coach Corp.,* 170 F. 2d 902 (C. A. 8); *Packinghouse Workers* v. *Wilson & Co.,* 80 F. Supp. 563 (N. D. Ill.). Indeed this very doctrine was successfully urged by appellant in a suit in which it was a defendant. *I. L. U.* v. *Sunset Line & Twine Co.,* 77 F. Supp. 119 (N. D. Cal.).[16] See also, *Fitzgerald* v. *Douds,* 167 F. 2d 714 (C. A. 2); *Int'l Union* v. *Int'l Union,* — F. 2d — 23

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remedy in the courts, are made unfair labor practices by Section 8 (b) (4) of the amended National Labor Relations Act, the basis of the 303 (b) remedy is not that such activities are unfair labor practices under the National Labor Relations Act but rather that, by virtue of Section 303 (a) of the Labor Management Relations Act, they are independently unlawful for purposes of that section of the Labor Management Relations Act only. Moreover, the 303 (b) remedy is limited to damages; the courts are without jurisdiction to grant injunctive relief. 167 F. 2d at 188–189. See also, the *Dixie*, *Wagshal* and *Sunset* cases cited in the text.

[16] The *Sunset* case involved an action similar to that in *Amazon.* Appellant was one of the defendants. The defendants therein, as well as the Board (which had intervened), moved to dismiss on the ground that the subject matter of the action was within the exclusive jurisdiction of the Board. It would thus seem that appellant is in the anomalous position of recognizing the Board's exclusive primary jurisdiction and the District Court's lack of jurisdiction when it is advantageous to do so (*Sunset*), and of failing to recognize it when it is not advantageous (the instant case).

L. R. R. M. 2517 (C. A. 8 March 31, 1949). Cf. *Gerry* v. *Superior Court,* 194 P. 2d 689, 22 L. R. R. M. 2279 (Cal. S. Ct. June 16, 1948); *In re DeSilva,* 23 L. R. R. M. 2085 (Cal. S. Ct., November 16, 1948); *Alonzo* v. *Industrial Container Corp.,* 23 L. R. R. M. 2169 (N. Y. S. Ct., December 22, 1948); *Ind'l Comm'n. of Utah* v. *N. L. R. B.,* 172 F. 2d 389 (C. A. 10).

It is clear, of course, that if the amended Act did not empower the federal district courts to determine, at the suit of private parties, whether particular conduct constitutes an unfair labor practice, it did not empower them to decide the subsidiary question whether particular persons or controversies are subject to the Act. Under the initial Act, as we have shown, *supra,* pp. 15–16, the district courts were without power to consider or decide either of these questions in any circumstances. The sole change made by the amended Act empowers the district courts to decide these questions preliminarily, but only when requested to do so by the Board, as an aid to proceedings pending before the Board.[17] The failure of Congress to expand the jurisdiction of the district courts beyond this is further evidence of the purpose of Congress to reaffirm the exclusive nature of the power conferred upon the Board to determine controversies concerning the coverage and meaning of the Act.

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[17] *Supra,* p. 16. See *Madden* v. *United Mine Workers,* 79 F. Supp. 616 (D. C. D. C.); *Evans* v. *I. T. U.,* 76 F. Supp. 881 (D. Ind.).

B. The Federal Declaratory Judgment Act does not confer upon District Courts concurrent jurisdiction with the Board to determine whether the National Labor Relations Act is applicable to particular persons or controversies

That the Declaratory Judgment Act does not enlarge the jurisdiction of federal district courts so as to confer upon them power to determine the applicability of the National Labor Relations Act, is demonstrated by the *Schauffler* case (*supra,* p. 15). There, as here, an employer requested a District Court to render a declaratory judgment as to whether its employment relations were governed by the Act. It was alleged that the Board intended to hold a hearing on an unfair labor practice complaint which had been issued against the employer, that such hearing was beyond the Board's authority because the employer's operations did not "affect commerce," and that, if the hearing were held, the employer would be irreparably damaged and its constitutional rights infringed. The Supreme Court held that, for the same reason that the District Court was without jurisdiction to determine the question presented in an equity suit (*Myers* case, *supra*), it was likewise without jurisdiction to determine it in a declaratory judgment action.

This Court, in *Int'l. Brotherhood* v. *Int'l. Union,* 106 F. 2d 871, reached the same conclusion. There the Brewery Workers Union had brought suit in the District Court against the Teamsters Union, requesting, *inter alia,* that the court, by declaratory judgment, determine the Brewery Workers to be the exclusive bargaining agent of certain employees. This Court held that the District Court was without juris-

diction to grant the relief requested, because the subject matter of the action was within the exclusive primary jurisdiction of the Board.

The rationale for the *Schauffler* and *Int'l Brotherhood* holdings is the well-established principle that the Declaratory Judgment Act does not extend the jurisdiction of the federal district courts "over an area not already covered or expressly forbidden." *Di Benedetto* v. *Morgenthau,* 148 F. 2d 223, 225 (C. A. D. C.), certiorari dismissed, 326 U. S. 686. See also, Borchard, *Declaratory Judgments* (1941 ed.), pp. 247–248; *Macauley* v. *Waterman Steamship Corp.,* 327 U. S. 540, 545, n. 4; *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227, 240; *Bradley Lumber Co.* v. *N. L. R. B.,* 84 F. 2d 97, 100 (C. A. 5), certiorari denied, 299 U. S. 559; *Doehler Metal Furniture Co.* v. *Warren,* 129 F. 2d 43, 45 (C. A. D. C.), certiorari denied, 317 U. S. 663; *Utah Fuel Co.* v. *Nat'l Bituminous Coal Comm'n.,* 101 F. 2d 426, 429–431 (C. A. D. C.), affirmed on other grounds, 306 U. S. 56; *Putnam* v. *Ickes,* 78 F. 2d 223, 226 (C. A. D. C.), certiorari denied, 296 U. S. 612; *Carbides Carbon Corp.* v. *Industrial Chemicals Co.,* 140 F. 2d 47, 50 (C. A. 4); *Miles Laboratories* v. *F. T. C.,* 140 F. 2d 683, 685 (C. A. D. C.), certiorari denied 322 U. S. 752. In other words, the federal district courts could grant a declaratory judgment as to the scope or coverage of the National Labor Relations Act only if, independent of the Declaratory Judgment Act, they had concurrent jurisdiction with the Board to determine such questions. As we have shown, however, the Board's primary jurisdic-

tion to decide these matters is exclusive and is subject to review only by the Court of Appeals. This, therefore, is an area in which the Declaratory Judgment Act is inoperative.

If appellant's contention that the Declaratory Judgment Act confers jurisdiction upon the district courts independently of the provisions of the National Labor Relations Act were sound, it would mean that the district courts are empowered, concurrently with the Board, to determine whether particular conduct amounts to an unfair labor practice, as well as to determine whether particular enterprises are subject to the provisions of the statute. This contention, long foreclosed under the National Labor Relations Act (see pp. 14–15, *supra*), has now been laid to rest by the unanimous decisions of the courts construing the Act, as amended. See, cases cited, pp. 17–20, *supra.*

Point II

The complaint was properly dismissed because appellant failed to exhaust the complete and adequate administrative remedy given by the governing statute

As we have shown (*supra,* pp. 11–12), appellant could have obtained the relief it sought by filing unfair labor practice charges against the Union with the Board.

Instead of following the statutory procedure, which would have afforded it a complete and adequate remedy, appellant applied directly to a federal district court for relief. But, as the District Court held, it was barred from granting the relief requested by "the

long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 50–51; *Macauley* v. *Waterman Steamship Corp.,* 327 U. S. 540; *Aircraft & Diesel Equipment Corp.* v. *Hirsch,* 331 U. S. 752.[18]

The rule requiring exhaustion of administrative remedies is as applicable to suits for declaratory judgment, as to actions for other types of relief. It is well recognized that where a statute provides, as does the Act in Sections 10 (e) and (f), a special and exclusive administrative procedure whereby redress may be secured, relief by way of declaratory judgment is barred unless and until the administrative procedure has been complied with. Borchard, *Declaratory Judgments,* (1941 ed.), p. 342; *Miles Laboratories, Inc.* v. *F. T. C.,* 140 F. 2d 683, 685 (C. A. D. C.), certiorari denied, 322 U. S. 752; *Washington Terminal Co.* v. *Boswell,* 124 F. 2d 235, 240, 251 (C. A. D. C.), affirmed, 319 U. S. 732; *Elliott* v. *American Mfg. Co.,* 138 F. 2d 678, 679 (C. A. 5); *Jones & Laughlin Steel Corp.* v. *United Mine Workers,* 159 F. 2d 18 (C. A. D. C.), certiorari denied, 331 U. S. 828.

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[18] See also, *Fitzgerald* v. *Douds*, 167 F. 2d 714, 717 (C. A. 2); *Florida* v. *Bellman*, 149 F. 2d 890, 891 (C. A. 5); *United Brick & Clay Workers* v. *Junction City Clay Co.*, 158 F. 2d 552, 554 (C. A. 6); *Thompson Products* v. *N. L. R. B.*, 133 F. 2d 637, 640 (C. A. 6).

Point III

The complaint was properly dismissed because the controversy was not subject to final and definitive adjudication by the district court

Apart from the exhaustion of administrative remedies rule, however, the Declaratory Judgment Act could not, in any event, be deemed to vest jurisdiction in the federal district courts to entertain the action. Clearly, that Act does not vest in the district courts jurisdiction to decide a controversy, unless it is one "admitting of an immediate and definitive determination of the legal rights of the parties." *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227, 241. See also, Borchard, *op. cit.,* pp. 83–86; *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 262. Here, a ruling by the District Court on the question presented would be purely "advisory" and in no way "definitive" of the legal rights of the parties. For, no matter how the court ruled on the question whether the operations of appellant's members affected commerce within the meaning of the Act, both appellant and the Union would be free to seek redetermination of the matter by the Board. The Union, notwithstanding the court's decision, would remain free to petition the Board (pursuant to Section 9 (e)) for a union shop election. The Board, in the course of processing such petition, would be free to decide the matter of jurisdiction *res integra.* Similarly, if, in the course of future negotiations, one party engages in conduct violative of the Act, the other remains free to file unfair labor practice charges with the Board, and the Board, unaffected by

the court's decision, would be free to entertain such charges and to impose sanctions against the offender. Cf. *Matter of Denver Bldg. & Construction Trades Council,* 82 N. L. R. B. No. 5, 23 L. R. B. M. 1524, March 15, 1949; *Ibid.,* 82 N. L. R. B. No. 137, 23 L. R. R. M. 1656, April 13, 1949. In short, irrespective of what decision the District Court renders, it would not conclusively determine the question of whether the labor relations of appellant and the Union are governed by the Act—only the Board, subject to review by the appropriate Court of Appeals, has power definitely to resolve this issue.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below be affirmed.

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MAY 1949.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings

set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

The relevant provisions of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * *

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"DEFINITIONS

"SEC. 2. When used in this Act—

* * * * *

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

"UNFAIR LABOR PRACTICES

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

"(3) by discrimination in regard to hire or tenure of employment or any term or con-

dition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to provisions of section 9 (a);

* * * * *

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later: * * *

* * * * *

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an

appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

* * * * *

"PREVENTION OF UNFAIR LABOR PRACTICES

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determining of such cases by such

agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States

Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * *

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe

* * * * *

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

* * * * *

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

* * * * *

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

* * * * *

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section,

without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

* * * * *

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in any industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been

certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

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